

1
2
3
4
5
6
7
8
9
10
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA (San Francisco)

11 William E. Dickinson, a individual; Larry
12 Anderson, a individual; Verne R. Anderson, a
13 individual; Betty Andres, a individual; Maxine
14 D. Barnett, a individual; Robert J. Belleavoine,
15 a individual; Walter Brown, a individual;
16 Melba Burch, a individual; Norman G. Carr, a
17 individual; Diana Doubek, a individual;
18 Marquita Eady, a individual; Joanne Finley, a
19 individual; Dorothy D. Gibson, a individual;
20 Pamela Glass, a individual; Delores
21 Gookstetter, a individual; Joseph Harris, a
22 individual; Patrick Hines, a individual;
23 Michael R. Horsley, a individual; Elizabeth
24 Hotchkiss, a individual; Lena Jordan, a
25 individual; Donald O. Kay, a individual;
26 Christiane M. Killen, a individual; Mark A.
27 Leim, a individual; John W. Lewis, a
28 individual; Paul Littlefield, a individual;
Stephen Marks, a individual; Roger R.
Matrinez, a individual; Daniel E. McLaughlin,
a individual; James Michenko, a individual;
Ruth Moore, a individual; Eugene L. Nelson, a
individual; James Perkins, a individual; Roger
Pfeifer, a individual; Steven L. Reeves, a
individual; Ruthie Richardson, a individual;
Donald E. Richmond, a individual; Herman
Roberson, a individual; Larry Schrier, a
individual; James D. Sheriffs, a individual;
Mark A. Stewart, a individual; Vernon
Thacker, a individual; Marshall Trudo, III, a
individual; Johannes Van Veen, a individual;
Michael Vance, a individual; Gregory
Williamson, a individual; Mary Willis, a
individual; Gregory K. Wilson, a individual;
Wanda Patterson, a individual.

CASE NO. 3:12-cv-01199 ~~MEJ~~ JSW

**~~[PROPOSED]~~ ORDER TO EXTEND TIME
TO RESPOND TO COMPLAINT (L.R. 6-1)**

Complaint served: February 13, 2012
Removal Date: March 9, 2012
Current Response Date: April 15, 2012
Agreed Response Date: After ruling on
pending motions

1
2 Plaintiff(s),

3 v.

4 DEPUY ORTHOPAEDICS, INC.; JOHNSON
5 & JOHNSON SERVICES, INC.; JOHNSON
6 & JOHNSON, INC.; THOMAS P.
7 SCHMALZRIED, M.D., A PROFESSIONAL
8 CORPORATION; and DOES 1 through 20,
9 inclusive,

10 Defendant(s).

11 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

12 Defendant Thomas P. Schmalzried, M.D., A Professional Corporation (“Defendant”) hereby requests, and Plaintiffs William E. Dickinson, Larry Anderson, Verne R. Anderson, Betty Andres, Maxine D. Barnett, Robert J. Belleavoine, Walter Brown, Melba Burch, Norman G. Carr, Diana Doubek, Marquita Eady, Joanne Finley, Dorothy D. Gibson, Pamela Glass, Delores Gookstetter, Joseph Harris, Patrick Hines, Michael R. Horsley, Elizabeth Hotchkiss, Lena Jordan, Donald O. Kay, Christiane M. Killen, Mark A. Leim, John W. Lewis, Paul Littlefield, Stephen Marks, Roger R. Matrinez, Daniel E. McLaughlin, James Michenko, Ruth Moore, Eugene L. Nelson, James Perkins, Roger Pfeifer, Steven L. Reeves, Ruthie Richardson, Donald E. Richmond, Herman Roberson, Larry Schrier, James D. Sheriffs, Mark A. Stewart, Vernon Thacker, Marshall Trudo, III, Johannes Van Veen, Michael Vance, Gregory Williamson, Mary Willis, Gregory K. Wilson, Wanda Patterson, (“Plaintiffs”) hereby agree to Defendant’s request, for an extension of time for Defendant to file a response to Plaintiffs’ Complaint as follows:

24 WHEREAS, Plaintiffs’ Complaint was filed in state court on February 9, 2012 and
25 Defendant was served on or about February 13, 2012;

26 WHEREAS, this matter was removed to this court by the other defendants on March 9,
27 2012;

1 WHEREAS, Defendant and Plaintiffs previously stipulated to a 30-day extension of time
2 for Defendant to respond up to April 15, 2012;

3 WHEREAS, since the above noted stipulation was filed, the following has occurred in
4 this matter:

5 1) A Conditional Transfer Order regarding the transfer of this matter to MDL
6 No. 2244, *In Re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation*,
7 was filed on March 23, 2012, which order was opposed by Plaintiffs on March 30, 2012.
8 Plaintiffs' motion to vacate this order was also filed on March 30, 2012 and DePuy's response is
9 due April 20, 2012.

10 2) On March 22, 2012, DePuy filed a Motion to Stay pending transfer to MDL No.
11 2244, which Plaintiffs intend to oppose. The stay motion is set for hearing on June 1, 2012.

12 3) On March 29, 2012, Plaintiffs filed a Motion to Remand this action to the
13 Superior Court for the County of San Francisco. DePuy will oppose the remand motion, which
14 is also set for hearing on June 1, 2012.

15 WHEREAS, all of the issues described above remain unresolved at present, leaving
16 doubt as to which court this matter will ultimately be litigated in and what manner of response
17 would be consistent with the rules and procedures of that court. Given the pending motions and
18 conditional transfer order, it appears this matter will not be litigated in the Northern District of
19 California in any case.

20 WHEREAS, Defendant requests an extension of time to respond to Plaintiffs' complaint
21 until such time as the venue and jurisdiction of this matter is resolved, and Plaintiffs have agreed.
22 This will avoid unnecessary confusion and additional complication while the pending motions
23 and issues are addressed and resolved, as well as avoid duplicative law and motion, since
24 Defendant will respond with a Rule 12(b) motion to dismiss if forced to respond currently, which
25 motion would address many of the same issues already addressed by Plaintiffs' Motion to
26 Remand and DePuy's opposition thereto. As such, this extension will allow the parties sufficient
27 time and opportunity to further meet and confer on the claims and causes of action asserted in the
28 complaint with the goal of potentially avoiding future motions by Defendant, particularly in light

1 of the resolution of the issues already pending. Thus, this extension of time allows the Court to
2 resolve these issues of jurisdiction and venue before Defendant responds to the Complaint.

3 THEREFORE, the parties agree that the response of Defendant Thomas P. Schmalzried,
4 A Professional Corporation to the Complaint shall be due at the earlier of these two potential
5 days:

6 20 days after the United States Judicial Panel on Multidistrict Litigation rules on whether
7 to transfer this matter to MDL No. 2244, *In Re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant*
8 *Products Liability Litigation*; or,

9 30 days after this Court grants Plaintiffs' Motion to Remand, if such a ruling occurs.

10
11 **IT IS SO ORDERED.**

12
13 DATED: April 12, 2012
14 _____

15 
16 _____
17 Judge of the United States District Court
18
19
20
21
22
23
24
25
26
27
28